IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 768 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TRIKAMBHAI RANCHHODBHAI PARMAR & OTHERS - Appellant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR MC BAROT for Appellant(s) : 1 - 6.
MR RC KODEKAR ADDL. PUBLIC PROSECUTOR for State of Gujarat

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 3-5-6-7-10 & 20/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Seven accused persons ('A-1, A-2, A-3, A-4, A-5, A-6 and A-7' for short) were charged and tried by the learned Additional Sessions Judge, Kheda at Nadiad (the 'trial Court' for short), in Sessions Case No. 11 of 1999 for the offences under Sections 147, 148, 302/149, 307/149, 326/149, 324/149 and 323/149 of the Indian Penal Code ('IPC' for short) and Section 135 of the Bombay Police Act, on the accusation that they all armed with deadly weapons, formed an unlawful assembly in furtherance of their common object to take revenge upon the victims and prosecution witnesses and they attacked them and in that attack they murdered two persons and caused grievous hurt and hurt to the witnesses. At the end of the trial, all the accused, except A-4, were found guilty of the offences with which they were charged and, therefore, vide judgment and order dated 31.7.2003, A-1, A-2, A-3, A-5, A-6 and A-7 were convicted by the trial court for the following offences and sentenced for the following terms, as stated herein below:

S.No	Term of sentence	Section/s of IPC
1.	R.I. for one year and fine of Rs.400/- i.d., S.I. for one month	147
2.	RI for two years and fine of Rs.800/- i.d., SI for 2 months	148
3.	Imprisonment for life and fine of Rs.3000 i.d., SI for 8 months	302/149
4.	RI for four years and fine of Rs.2,000 i.d., SI for 4 months	326/149
5.	RI for two years and fine of Rs.1000 i.d., SI for two months	324/149
6.	RI for four months and fine of Rs.500 i.d., SI for one month	323/149
7.	RI for five months and fine of Rs.400 i.d., SI for one month	504

It is also ordered if the amount of fine is recovered from the accused, Rs.5,000/- shall be paid to the heirs and legal representatives of each of the deceased persons i.e., Gokal alias Gopalbhai Ramabhai and Haribhai Chaturbhai.

So far as A-4 is concerned, he has been acquitted of the offences with which he was charged.

2. Aggrieved thereby A-1, A-2, A-3, A-5, A-6 and A-7 have filed this appeal with the aid of Section 374 of the Code of Criminal Procedure ('the Code' for short).

3. The prosecution case, as disclosed from the F.I.R. and unfolded during the trial, is as under:

3.1. It is the case of the prosecution that Chimanbhai Prabhudas Parmar, was working as an agricultural labourer. On 1.9.1998, when he reached home, his wife told him that in the morning at about 9 O' clock there was some exchange of words between Harikaka and Trikam Ranchhod at the Para in connection with some drops being splashed while taking out the vehicle which had got stuck on the road. It is alleged that as a result of the said incident, the ladies had quarreled amongst themselves. Thereupon he immediately went to his uncle's house at Navapara to inquire about him. When he was talking with

Harikaka, at about 9 O' clock at night, Trikambhai Ranchhodbhai Parmar and his family members came to his uncle's compound with dharia and sticks and started abusing them, whereupon his uncle Haribhai told them not to abuse them. It is alleged that at this, they suddenly got incited and fell upon his uncle to beat him up with dharia and sticks. Trikambhai Ranchhodbhai had dealt blows with the dharia on his uncle's head as well as on his waist. Therefore, he and other members of his family Ramabhai Chaturbhai, Bhagwanbhai Prabhudas, Ashokbhai Ramabhai, Trikambhai Ramabhai, Gopalbhai Ramabhai, etc., intervened to rescue him. It is further alleged that thereupon Trikambhai Ranchhodbhai and other members of his family assaulted his family members with the dharia and sticks. A-1, Trikambhai Ranchhodbhai had dealt a blow with the dharia on Ramabhai Chaturbhai's right hand and A-6, Dinesh Bhagwandas had injured him on the left leg with a spear. A-1, Trikambhai Ranchhodbhai had inflicted a blow with the dharia on

Gopalbhai's head whereas A-2, Bharat Naranbhai had inflicted stick blows on Gopalbhai. As A-1, Trikambhai Ranchhodbhai tried to deal a blow with the dharia on his head, he raised his hand to catch the dharia whereupon he was hurt on the head with the beak of the dharia. He was also hurt on the finger of his left hand. In the melee, his aunt Devila was injured on the eye and his aunt Ganga was injured on her hand. It is further alleged that at the time when they had come to assault them, A-3, Bhagwanbhai Ranchhodbhai, A-7, Naranbhai Ranchhodbhai, A-5, Shantilal Bhagwandas as well as A-2, Bharat Naranbhai had sticks in their hands whereas A-4, Shanabhai Ranchhodbhai was inciting them. While the assault was going on, other members of the family came running whereupon they had fallen back and as Harikaka and Gopalbhai had sustained head injuries, there was excessive bleeding and hence a rickshaw was called for from the village and immediately they were taken to Anand Nagarpalika Hospital where Devila Kaki and Ganga

Kaki had been given treatment as outdoor patients and Ramakaka had been admitted as an indoor patient. As Haribhai Chaturbhai and Gopalbhai Ramabhai had sustained serious injuries on the head and were unconscious, after giving them preliminary treatment, they had been transferred to S.S.G. Hospital at Vadodara for further treatment.

3.2. A complaint in respect of the aforesaid incident was lodged at Anand Rural Police Station where it is registered vide CR No.I-204/98 against the accused persons for commission of the offences under Sections 147, 148, 307/149, 326/149, 324/149 and 323/149 of IPC and Section 135 of the Bombay Police Act. The complaint is reduced in writing by P.W.10, Abhaysinh Lalubhai Vaghela, as per the narration given by the complainant, which is on record at Ex.55. Thereafter Abhaysinh Lalubhai Vaghela started the investigation. During the course of investigation he had drawn the panchnama of the

scene of offence in presence of panchas, collected samples of blood stained earth and control earth and seized a helmet and wristwatch from the scene of offence. He had thereafter recorded the statements of witnesses. Since two injured persons were in the S.S.G. Hospital, Vadodara, undergoing treatment, he visited SSG Hospital, Vadodara for recording their statements and upon inquiry he had found that both the patients were unconscious and hence he could not record their statements. On 12.9.1998 he received a telephone vardhy from S.S.G. Hospital, Vadodara to the effect that injured Haribhai Chaturbhai had expired while undergoing treatment. Therefore he had gone to S.S.G. Hospital, Vadodara and drawn the inquest panchnama in presence of panchas. Thereafter the dead body of Haribhai was sent for post mortem examination. He also seized the clothes of the deceased in presence of panchas and drew a panchnama. Thereafter he made a report to the learned J.M.F.C. Anand for addition of Section

302 IPC in the FIR against the accused who were in judicial custody. Thereafter muddamal in connection with the case were forwarded to F.S.L. for analysis. During the course of investigation, a message was received from S.S.G. Hospital, Vadodara that injured Gopalbhai Ramabhai had expired during the course of treatment and hence he had gone to the hospital and prepared the inquest on the dead body of deceased Gopalbhai and prepared the panchnama in presence of panch witnesses. Thereafter he sent the dead body of Gopalbhai for autopsy. He also obtained medical certificates of the injured persons in respect of the injuries sustained by them. On receipt of the autopsy reports of both the deceased persons and injury certificates of the injured witnesses and also F.S.L. report and as incriminating evidence was found against the accused persons, he filed charge sheet against them for commission of the offences under Sections 147, 148, 302/149, 307/149, 326/149, 324/149 and 323/149 of the IPC and Section 135 of the Bombay Police Act, in the

Court of learned J.M.F.C, Anand, where it was registered as Criminal Case No.5818 of 1999.

3.3. As the offences under sections 302, 307, etc., of IPC are exclusively triable by a Court of Sessions, the learned JMFC, Anand committed the case to the Sessions Court, Kheda at Nadiad where it was registered as Sessions Case No.11 of 1999 and thereafter it was transferred to the learned Additional Sessions Judge, Camp at Anand.

3.4. The learned Additional Sessions Judge, Camp at Anand to whom the case was made over for trial, framed charges against the accused persons for the offences under sections 147, 148, 302/149, 307/149, 326/149, 324/149 and 323/149 of the IPC and Section 135 of the Bombay Police Act. The charges were read over and explained to the accused persons. The accused persons pleaded not guilty to the charges and claimed to be tried and, therefore, the trial Court put them to trial.

3.5. To prove the culpability of the accused persons, the prosecution has examined as many as 10 witnesses and relied upon their oral testimonies, details of which have been given in paragraph 3 of the impugned judgment and order, as under:

PW No	Name and status of the witness	Ex.No	Page
1	Dr. Arvind Jethabhai Dalvadi, who examined the injured persons at Anand Nagarpalika General Hospital	29	331
2	Dr. Ranjit S. Choudhary, who treated the injured victims at SSG Hospital	45	355
3	Dr. Kishor Promodbhai Desai, who conducted post mortem examination on the two dead bodies	49	363
4	Chimanbhai Prabhudas Parmar, complainant and injured eye witness	54	389
5	Solanki Ranjitsinh Punambhai, Circle Inspector	56	410
6	Ramabhai Chaturbhai, injured eye witness	67	433
7	Vipul Haribhai Parmar, son of deceased Haribhai	68	439
8	Devilaben Haribhai, widow of Haribhai, eye witness	69	443
9	Gangaben Ramabhai, sister in law of deceased Haribhai and eye witness	71	452

PW No	Name and status of the witness	Ex.No	Page
10	Abhaysinh Lalubhai Vaghela, PSI and Investigating Officer	76	467

3.6. To prove the charges levelled against the accused persons, the prosecution has also produced a number of documents and relied upon the contents of the same, details of which have been given in paragraph 4 of the impugned judgment and order, which shall be referred to hereinafter in this judgment as and when required.

3.7. After recording of the evidence of the prosecution witnesses was over, the trial Court explained to the accused persons the circumstances appearing against them and recorded their further statement as required under Section 313 of the Code. In their further statement, the accused persons denied the case of the prosecution in its entirety and stated that a false case has been filed against them. They have

neither led any evidence nor did they examine any witness in support of their defence. However, they have given a written statement which is on record at Ex.16. In their further written statement the accused have stated that Chimanbhai Prabhudas, Ashokbhai Ramabhai, Trikambhai Ramabhai, Bhagwanbhai Prabhudas, Ramabhai Chaturbhai, Gokal alias Gopalbhai Ramabhai, Haribhai Chaturbhai, etc., had formed an unlawful assembly and by hatching a conspiracy on 10.9.1998 at 9 O' clock at night attacked all the accused in front of the house of deceased Haribhai Chaturbhai and had caused serious injuries to the accused with the weapons in their hands. They reside at Navapara opposite the house of deceased Haribhai Chaturbhai and the way to go to and fro from their house is in front of Haribhai's house. The line of their house is exactly opposite Haribhai's house at a distance of 10 to 15 feet. On the day of the incident at 9 O' clock, he had set out in his vehicle at that time, water, slush and mud had been splashed by

the vehicle's tyre on Haribhai Chaturbhai's wife Devilaben and hence she had quarrelled with the ladies in their house and thereafter, Devilaben had informed her husband deceased Haribhai about the quarrel at Ajarpura village where he was serving as a teacher and thereafter Haribhai had returned home at 11.00 in the fore-noon and thereafter he had called his brothers and nephews and had hatched a conspiracy to assault the accused. Accordingly, all the prosecution witnesses had gathered together with weapons and formed an unlawful assembly and were standing in front of Haribhai's house. Haribhai, with the purpose of indulging in a fight, had put on a helmet and was holding a dharia in his hand, whereas Chimanbhai Prabhudas had a stick in his hand, Gokal alias Gopalbhai Ramabhai had a stick in his hand, Ashokbhai Ramabhai and Trikambhai Ramabhai had sticks, Bhagwandas Prabhudas had a stick and Ramabhai Chaturbhai had a stick and all of them, with their weapons, had formed an unlawful assembly and with the intention of

killing the accused were waiting for them. Meanwhile, at 9 O' clock at night, Dineshbhai, son of Bhagwandas and Bharatbhai, son of Naranbhai, accused No.6 and 2 in this case, were passing in front of Haribhai's house, at that time the above mentioned persons had stopped Bharatbhai and Dineshbhai and asked them as to why they were quarrelling with ladies and after saying so, Haribhai Chaturbhai dealt blows with the dharia on the wrist of Bharatbhai's right hand and caused a two inch skin deep wound below the palm whereas deceased Haribhai had caused injury to Dineshbhai on his left upper arm with the dharia and deceased Gokal alias Gopalbhai had struck Dineshbhai on the back. At that time Dineshbhai and Bharatbhai had raised shouts whereupon they had come out and on seeing, as they had felt that the prosecution witnesses would kill Dineshbhai and Bharatbhai, the two of them had intervened. At that time the prosecution witnesses as well as deceased Haribhai, Gokal alias Gopal had launched an assault on them,

wherein deceased Haribhai had dealt a blow with a dharia on the heel of Trikambhai Ranchhodbhai's right foot and Ramabhai Chaturbhai had inflicted a stick blow on the head and Chimanbhai Prabhudas had struck accused No.3, Bhagwan Ranchhod, on the head and left hand and Bhagwandas Prabhudas had dealt a blow with a stick on the elbow of the right hand as well as left shoulder of accused No.5, Shantilal Bhagwandas, and deceased Gokal alias Gopalbhai Ramabhai had inflicted blows with a stick on the right hand, back and shoulder of accused No.7, Naranbhai Ranchhodbhai, and Ashokbhai Ramabhai and Trikambhai Ramabhai had inflicted stick blows on Dineshbhai Bhagwandas and Bharatbhai Naranbhai and as all the accused had sustained serious injuries they had been sent to the Anand Nagarpalika General Hospital with police yadi where prosecution witness No.1, Dr. Arvindbhai Jethabhai Dalvadi had examined them and provided treatment as all of them had sustained grievous injuries. As excessive blood had fallen on their clothes, their clothes had

been seized by drawing panchnama. As per the say of the accused, as the prosecution witnesses as well as deceased Haribhai Chaturbhai and deceased Gokal alias Gopalbhai Ramabhai had come together and formed an unlawful assembly, in connection with a small incident, with the intention of killing the accused and attacked them and caused injuries to them, they had in their self defence, brandished the weapons in their possession and in that process the deceased Haribhai and other witnesses may have sustained injuries and in connection with the injuries sustained by the accused, accused No.6, Dineshbhai Bhagwandas, had lodged a complaint at the Anand Rural Police Station being CR No.I-205/98 on 10.9.1998 in respect of which Sessions Case No.287 of 2000 against the prosecution side is pending. They have further stated that they have not committed any offence and are innocent and that the prosecution side had attacked them because of which all the accused, under the impression that they would be killed, had, by way of self

defence, wielded the weapons held by them, as a result of which if the prosecution side had been injured then they cannot be said to have committed any offence. They have also submitted that the prosecution has not placed the correct facts before the Court and despite the fact that there are several houses in the vicinity, no independent person has been examined. During this incident a crowd of 200 to 300 persons had gathered, out of which if any person had been examined, the real truth would have come out. They have further submitted that their written explanation be accepted and have prayed that as they have not committed any offence, they be declared innocent.

3.8. On appreciation, evaluation, analysis and scrutiny of the evidence on record, the trial court has held that the prosecution has failed to establish the charges levelled against accused No.4, and, therefore, he is acquitted of the offences with which he was charged. However, the

trial court has held that the prosecution has established that the other six accused persons had formed an unlawful assembly, armed with deadly weapons, and in furtherance of their common object, have murdered two persons and caused grievous hurt as well as hurt to the prosecution witnesses and thus the complicity of A-1, A-2, A-3, A-5, A-6 and A-7 for commission of the offences under Sections 147, 148, 302/149, 326/149, 324/149, 323/149 and 504 IPC is proved beyond reasonable doubt. On the aforesaid finding, the trial court convicted A-1, A-2, A-3, A-5, A-6 and A-7 for commission of the offences to which reference is made in earlier paragraph of this judgment.

4. Mr. Manubhai C. Barot, learned advocate of the accused, has submitted that since A-3, Bhagwanbhai Ranchhodbhai, has been released from jail with effect from 25.12.2003 pursuant to the notification bearing Outward No.1099/5226/Part 1/J dated 24.12.2003 issued by the State of

Gujarat, in exercise of the powers conferred under Section 161 of the Constitution of India, granting benefit to those accused persons who have completed 70 years of age and have undergone a jail term of more than five years, on account of celebration of birth anniversary on completion of 80 years of age by the Honourable Prime Minister Shri Atal Bihari Vajpayee, he does not press this appeal qua A-3, Bhagwanbhai Ranchhodbhai.

4.1. So far as remaining accused persons are concerned, Mr. Barot has raised the following contentions:

(i) The prosecution has suppressed the genesis and origin of the crime and has not presented the true facts.

(ii) The complainant party has formed an unlawful assembly, armed with deadly weapons in furtherance of their common object to attack the

accused party and they were the aggressors. They have picked up the quarrel and in that quarrel all the accused persons have received grievous hurt as well as simple injuries.

(iii) The prosecution has not explained the injuries sustained on the person of all the accused and, therefore, failure to explain the injuries on the person of the accused is fatal to the prosecution case.

(iv) It was a case of a free fight between two groups and since the prosecution has not come with the true and correct facts, the prosecution has failed to prove the charges levelled against the accused persons.

(v) There is a defence version that the prosecution has not been able to explain the injuries on the accused persons and the said version is probable and is capable of raising doubt on the prosecution case.

(vi) There are lot of improvements in the evidence of the prosecution witnesses in respect of what they have stated in the complaint, in the Court as well as in their police statements.

(vii) Since a doubt is raised on the prosecution case, the accused persons are entitled to the benefit of doubt.

(viii) Deceased Gopalbhai died after about a month. There is evidence to the effect that had he been given proper treatment, he would not have died.

(ix) The accused persons exercised their right of private defence as they were attacked by the complainant party after forming an unlawful assembly, armed with deadly weapons, in furtherance of their common object to take revenge upon the accused persons.

(x) There are lot of omissions,

contradictions and improvements in the evidence of the prosecution witnesses. Oral evidence of each of the prosecution witnesses does not get corroboration from what they have stated in their police statement. Similarly, each of the prosecution witnesses have contradicted with the other prosecution witnesses in their statement.

(x) Alternatively, it is submitted by Mr. Barot that deceased Haribhai died on the next day of the incident and deceased Gopalbhai died after about a month and, therefore, if defence version is not accepted, then also it is not a case of murder but, at the most, it would be a case of culpable homicide not amounting to murder punishable under Section 304 Part I IPC and since the accused persons have already undergone imprisonment for more than nine years, the custodial sentence may be treated as substantive sentence and they may be released from jail.

4.2. In support of his above contentions, Mr.

Barot, learned advocate of the accused, has also relied upon the following reported decisions of the Supreme Court:

(i) Lakshmi Singh and others v. State of Bihar, (1976) 4 SCC 394,

(ii) Ram Asrey Pandey v. State of Bihar, 1977 SCC (Cri.) 374,

(iii) Harkirat Singh v. State of Punjab, (1997) 11 SCC 215,

(iv) Rukma (Smt.) and others v. Jala and others, 1998 SCC (Cri.) 213,

(v) Bunnilal Choudhary v. State of Bihar, (2006) 10 SCC 639.

4.3. On the aforesaid premises, it is submitted by him that the prosecution has failed to prove the charges levelled against the accused persons beyond reasonable doubt and, therefore, the appeal may be allowed and the accused may be set at liberty. Alternatively, it is submitted by him that the conviction recorded under Section 302 IPC may be altered to conviction under

Section 304 Part I IPC for the offence of culpable homicide not amounting to murder and custodial sentence undergone by each of the accused which is more than nine years may be treated as substantive sentence and the accused may be set at liberty and the appeal may be allowed in part.

5. In counter submission, Mr. R.C. Kodekar, learned APP, has submitted that the impugned judgment and order does not require any interference of this Court as the impugned judgment and order of conviction and sentence is just and proper on the basis of the evidence on record. He has further contended that no case is made out to take a view contrary to the view taken by the trial court. According to him, the prosecution has not suppressed the genesis and origin of the crime. The prosecution has come out with the true case and genesis and origin of the occurrence of the crime has also been narrated correctly. It is emphasized by him that the

accused party has also filed a complaint which is subsequent in point of time and the accused party has received injuries by the hands of the complainant party as the complainant party had thrown wooden logs on the accused persons in their defence. The injuries sustained by the accused party are very minor and simple and the prosecution has explained the said injuries on the accused persons. It is also pointed out by him that the prosecution witnesses were not aggressors. From the prosecution side there were only two persons at the initial stage, and on seeing both of them the accused party came with dharia, spear and sticks and assaulted them. The assault made by them were so severe that Haribhai had received more than ten external injuries and the accused have also inflicted injuries on those persons who tried to rescue Haribhai. Gopalbhai who tried to rescue Haribhai was attacked by the accused party and the injuries caused to him were so severe that he ultimately succumbed to the same after writhing about a month. He has also

drawn our attention to the evidence of the prosecution witnesses and contended that there is no omission, contradiction or improvement in the evidence of the complainant as what he has stated in the complaint is what he has stated in his deposition before the Court and in the police statement. Similar is the case with other witnesses also. Their version in the police statement and testimony in the Court is same. He has contended that the evidence of the prosecution witnesses are consistent and they unerringly lead to the conclusion that the accused were the aggressors and they formed an unlawful assembly, armed with deadly weapons, and in furtherance of their common object to take revenge against the complainant party, they attacked them and killed two persons and that too on a very petty and trivial matter. Lastly it is submitted by him that the prosecution has been able to prove the charges levelled against the accused persons beyond reasonable doubt and, therefore, the impugned judgment and order is

required to be confirmed by this Court by upholding the conviction and sentence recorded by the trial Court.

5.1. So far as the alternative plea raised by Mr. Barot is concerned, according to Mr. Kodekar, it is a clear cut case of murder of two persons and it cannot be said that it is a case of culpable homicide not amounting to murder. For commission of the offence of murder, the minimum sentence prescribed is imprisonment for life and the trial court has imposed the minimum punishment on the accused persons. So far as other offences under Sections 326, 324, 323 and 504 IPC are concerned, the accused have committed the said offences and the prosecution has been able to establish the same beyond reasonable doubt as some of the witnesses have received grievous hurt and some received simple injuries.

5.2. So far as the judgments relied upon by Mr. Barot are concerned, Mr. Kodekar has

submitted that the proposition of law laid down therein is not applicable to the facts of the instant case.

5.3. On the aforesaid premises, it is submitted by him that the appeal lacks merit and it deserves to be dismissed. He, therefore, urged to dismiss the appeal.

6. This Court has considered the submissions advanced by Mr. Manubhai Barot, learned advocate of the accused and Mr. R.C. Kodekar, learned APP for the State of Gujarat at length and in great detail. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read and re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. In light of caution sounded by the Supreme Court while dealing with the cases in which sentence of imprisonment for life is imposed on the accused,

this Court has examined the entire evidence on record for itself independently of the trial Court and examined arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether it was the accused and none else who have committed the offences as alleged against them. We have also gone through the written submissions tendered by the prosecution as well as by the accused before the trial court which are on record at Ex.88, 89 and 91 and forming part of the paper book. We have also carefully considered the judgments cited at the bar by Mr. Barot, learned advocate for the accused.

7. Be it stated at the outset that as per the defence version of the accused, it was a free fight between two groups and in the said fight injuries were sustained by the accused and, therefore, A-6, Dineshbhai Bhagwandas filed a complaint against some of the persons of the complainant party at Anand Rural Police Station where it is registered vide CR No.I-205/98 for

commission of offences under Sections 326, 147, 148, 149 and 504 IPC. The same investigating officer who investigated the offence registered vide CR No.I-204/98 filed by complainant Chimanbhai Prabhudas Parmar has investigated into the said case and filed charge-sheet against some of the persons of the complainant side who have been arraigned as accused in the said complaint, before the learned JMFC, Anand. Since both cases arose out of the same incident, the learned JMFC, Anand committed the case which arose out of the complaint filed by A-6 Dineshbhai also to the Sessions Court, Nadiad which was tried by the trial court. It is settled principle of law that if two cases arise out of same incident, both cases should be tried by same Judge, by way of cross case but by a separate trial, and judgment has to be delivered on the same day in both the cases. It is also settled principle of law that the evidence recorded in one case cannot be read as evidence in another case and vice versa. So far as the complaint filed by A-6 Dineshbhai is concerned, the accused persons of that case have

been acquitted by the trial Court of the offences with which they were charged and the State has not filed appeal against the said judgment and order of acquittal.

8. In the backdrop of the aforesaid facts situation, let us now examine the facts of the case on hand:

8.1. As per the prosecution case, the accused were the aggressors and they, with a view to take revenge upon the complainant side, armed with deadly weapons, formed an unlawful assembly and in furtherance of their common object, all of them, at a time, attacked Haribhai and the complainant Chimanbhai and thereafter attacked the other persons who had reached to rescue Haribhai. This is an unfortunate case in which two persons have lost their life over a very petty incident, two persons received grievous injuries and two persons received simple injuries.

9. There is no dispute that two persons from the complainant party had died a homicidal death whereas one person has received grievous injuries and three persons have received simple injuries. In this connection, let us examine the evidence on record:

9.1. The prosecution has examined and relied upon the evidence of P.W.1, Dr. Arvind Jethabhai Dalvadi, Ex.29. He has deposed that on 10.9.1998, he was discharging duties as Medical Officer at Anand Nagarpalika General Hospital. At about 10.30 P.M., residents of Gana village, Devilaben Haribhai Parmar, Haribhai Chaturbhai Parmar, Chimanbhai Prabhudas, Gopalbhai Ramabhai, Ramabhai Chaturbhai and Gangaben Ramabhai had come with a yadi issued by Anand Rural Police Station. Therefore, he has registered a Medico-legal case. In the history they had stated that they had been attacked with dharias by Trikambhai Ranchhodbhai and Bharatbhai. He has issued injury certificates to each of the injured persons.

Ex.31 is the injury certificate in respect of the injuries sustained by Chimanbhai Prabhudas Parmar. The certificate shows that he had one incised wound on the head, about one inch, bone deep, on the parietal region, which was bleeding.

Ex.32 is the injury certificate in respect of Gopalbhai Ramabhai Parmar. The said medical certificate shows that he had one linear 2 inch incised wound on the parietal region, bone deep, from which blood was oozing. As per X-ray report there was a fracture on the parietal bone of the skull. He was referred to the S.S.G. Hospital for further treatment vide Reference Note Ex.33. X-ray and Radiologist's report is also produced. As per the report of the Radiologist, Gopalbhai had sustained fractures on the left side of the head as well as on the bone above his ear. Report of Radiologist is at Ex.34.

Ex.36 is the medical certificate in respect of the injuries sustained by Haribhai Chaturbhai Parmar. The said certificate shows that there was

a one inch and two 1.2 inches, that is, in all three incised wounds on the head, all bone deep. There was a swelling on his right cheek in front of the ear. As per the Radiologist's report, he had sustained depressed fracture of the left parietal region. X-ray and Radiologist's report are produced vide Ex.37 and 38. After giving him primary treatment he was referred to S.S.G.Hospital for further treatment.

Ex.39 is the medical certificate in respect of Ramabhai Chaturbhai Parmar. This certificate shows that he had sustained the following injuries:

(i) A one inch incised wound on the base of the first finger of right hand which was bleeding,

(ii) An incised wound about one inch in size, on the left thigh, which was bleeding,

(iii) An incised wound about two inches on the left hand from base to the knuckle of the first finger,

(iv) There was swelling on both hands,

(v) There was a one inch incised wound behind the left ear.

As per X-ray report Ex.39, there was a fracture of the lower portion of the ulna as well as the fourth and fifth metacarpal bones of the left hand. There was a fracture of lower part of the ulna of the right hand. There was also fracture of the second metacarpal bone as well as the proximal phalanx of the middle finger. X-rays and Radiologist's report are produced vide Ex.40 and 41. Indoor case papers showing details of the treatment given to him are produced at Ex.42.

Ex.43 is the certificate issued in respect of the injuries sustained by Gangaben Ramabhai Parmar. As per the said certificate, she had a 1 cm. abrasion wound on the thumb of the right hand.

Ex.44 is the certificate in respect of the injuries sustained by Devilaben Haribhai Parmar and as per the said certificate she had -

(i) A 1 cm. incised wound on the forehead,

and

(ii) A 3 x 1 inch swelling on the left parietal region.

9.2. He has further testified that as per his opinion all the injuries were fresh and that the injuries sustained by Gopalbhai, Haribhai and Ramabhai were grievous. The injuries sustained by the others were simple in nature. The injuries sustained by Haribhai and Gopalbhai can be caused by dharia whereas those sustained by Ramabhai can be either by a sharp cutting instrument like dharia or by a blunt object, like a stick, pipe, etc. The injuries sustained by the other patients can also be caused by a sharp cutting instrument like dharia. He has deposed that the muddamal dharia can cause injuries of the nature sustained by all the patients except Gangaben.

9.3. On reappraisal of the evidence of Dr. Dalvadi, there is no manner of doubt that three persons have received grievous injuries and three persons have received simple injuries.

10. The prosecution has thereafter examined and relied upon the evidence of P.W.2, Dr. Ranjit S. Choudhary, Ex.45. He has, inter alia, testified that he was discharging duties in the Medico-legal Division of Sayaji Hospital. On 11.9.1998 at 00:30 hours, two patients had been referred by a reference note of the Anand Nagarpalika General Hospital viz., Haribhai Chaturbhai Parmar and Gopalbhai Ramabhai Parmar, both residents of Gana. On examining Haribhai the following injuries were noticed by him:

(i) One contused lacerated wound on the left parietal region from which the external side of the brain was seen to be protruding which was approximately 2 x 1 inch in size and brain deep,

(ii) One incised wound 3 x ½ cm. on the right side of the right parietal region, scalp deep,

(iii) One incised wound on the right shoulder approximately 3 x 1 inch, bone deep.

10.1. Dr. Choudhary has further deposed that the patient could not speak, he was unconscious

and was in a serious condition. He was, therefore, immediately referred to the surgical and orthopaedic departments. The patient died within 24 hours at 10:15 p.m. on 11.9.1998. The injuries sustained by Haribhai can be caused by sharp cutting instrument.

10.2. Dr. Choudhary has further deposed that another patient Gopalbhai Ramabhai was also brought along with Haribhai on the same day. As per the history given by Gopalbhai, he had been beaten at 9.30 at night with dharia and sticks by Trikam Ranchhod and others. He has further deposed that he had noted the aforesaid fact in their register which is at Ex.47. On examining Gopalbhai, the following injuries were noticed by him:

(i) One stitched contused lacerated wound on the left side of the brain 5 to 6 cms. long.

(ii) A contusion on the left side of the back 10 x 2 cms.

(iii) A bruise on the left flank 5 cm. x 1 cm.

10.3. Dr. Choudhary has further deposed that the patient was conscious. He was referred to the Surgical Department for other treatment. The injuries sustained by him were grievous in nature. The injuries sustained by Gopalbhai can be caused either by sticks or by a sharp cutting instrument. Injury Nos.2 and 3 sustained by Gopalbhai can be caused by hard blunt object.

10.4. On reappraisal of the evidence of this witness, it is noticed that Haribhai was unconscious and could not speak and he was in a serious condition and he died on the next day of the incident. Similarly injuries sustained by Gopalbhai were also serious in nature but he was conscious and he gave the history that Trikambhai Ranchhodbhai and others had caused injuries to him by dharia and sticks.

10.5. In view of the statement made by Gopalbhai before the Dr. Choudhary, it is clear that he has received grievous injuries because of the blows given by A-1 and the prosecution

case is also the same. Gopalbhai has died about one month after the incident.

11. To prove that Haribhai and Gopalbhai died a homicidal death, the prosecution has examined and relied upon the evidence of Dr. Kishor Promodbhai Desai, Ex.49. He is the doctor who has performed autopsy on the dead bodies of Haribhai and Gopalbhai. He has deposed that Haribhai had the following 10 external injuries:

(i) Contused lacerated wound vertically placed over the left frontoparietal region. 7 cm. above (L) eyebrow, 4 cms. away and parallel to sagittal plane 4 x 1 x bone deep.

(ii) Contused lacerated wound vertically placed 7 cm above right eye brow in the right frontoparietal region 3 cm away and parallel to sagittal plane 3 x 1 cm x bone deep.

(iii) Linearly horizontal lacerated contused wound left mastoid region of left temporal bone 3 x 2 x bone deep.

(iv)Elliptical incised wound over top of right shoulder horizontally directed 4 x 1 x muscle

deep away 5 cm failing directed medially.

(v) Abrasions three in number over left scapular region 4 x 3 cm, 3 x 1 cm, 5 x 1.5 cm.

(vi) Contusion present over dorsum right wrist 3 x 1 cm.

(vii) Contusion present over centre of chest 3 x 1 cm front aspect.

(viii) Contused abrasion present over the lower abdomen either side 2.5 x 1 cm, 2 x 1 cm.

(ix) Abrasion over the lateral aspect right thigh 7 x 2 cm.

(x) Old healed wound front of U/3 right leg with scab formation 7 x 1 cm.

All the injuries were antemortem. All injuries were fresh except injury No.10.

He also noticed the following internal injuries:

(i) Haematoma below the scalp frontal and occipital flaps.

(ii) Extracranial haematoma over the vault of the skull.

(iii) Depressed fracture over left and right temperoparietal bone extending into the middle cranial fossa and in the occipital bone. Subdural

and subarachanoid haemorrhage over both tempero parietal occipital lobes. Intraventricular haemorrhage.

According to him, the cause of death was cranio cerebral damage following trauma.

The post mortem report of deceased Haribhai is produced at Ex.50.

11.1. Dr. Desai who conducted post mortem examination on the dead body of Gopalbhai, in his oral testimony, has stated that he had noticed the following external injuries:

(i) Old healed wound of size 4 cm +nt on right parietal scalp.

(ii) Abrasion of size 4 x 1 cm stitched at left elbow joint laterally which is liner and with left form scab found which is of 2 x 1 cm size on posterior part of left elbow joint.

(iii) Old healed abrasion of size 2 x 2 cm on left wrist joint front.

Dr. Desai also found three internal injuries. According to Dr. Desai, all the injuries were antemortem. He has deposed that the cause of

death of Gopalbhai was septicaemia following cerebral abscess after cranio cerebral trauma. The post mortem report is produced at Ex.51.

12. On a conjoint reading of the evidence of P.W.3, Dr. Kishor Promodbhai Desai, Ex.49 as well as postmortem report at Ex.50 in respect of Haribhai and post mortem report Ex.51 in respect of Gopalbhai, it has to be deduced that the trial court has rightly come to the conclusion that both, Haribhai and Gopalbhai, have died a homicidal death. We, therefore, confirm the said finding of the trial court.

13. Having held that both the deceased persons have died a homicidal death and two prosecution witnesses have received grievous injuries and two prosecution witnesses have received simple injuries, the next question which is required to be considered by this Court is as to whether the prosecution has proved that the accused, armed with deadly weapons, formed an unlawful assembly in furtherance of their common

object to attack the complainant party for taking revenge for the incident which had taken place in the morning and assaulted the complainant party as a result of which two persons died and four others sustained grievous hurt and simple injuries.

14. In this connection, the prosecution has examined and relied upon the evidence of the following witnesses:

(i) P.W.4, Chimanbhai Prabhudas Parmar, complainant and injured eye witness, Ex.54.

(ii) P.W.6, Ramabhai Chaturbhai, injured eye witness, Ex.67.

(iii) P.W.7, Vipul Haribhai Parmar, son of deceased Haribhai, Ex.68.

(iv) P.W.8, Devilaben Haribhai, widow of Haribhai, injured eye witness, Ex.69.

(v) P.W.9, Gangaben Ramabhai, sister in law of deceased Haribhai and injured eye witness, Ex.71.

14.1. P.W.4, Chimanbhai Prabhudas Parmar,

Ex.54, in his oral testimony has testified that he was working as a farm labourer. On the day of the incident, at about 3 O'clock in the afternoon he had gone to the G.R.D. at Vidyanagar to get his pay and had returned home at about 8:00 P.M. on the same day. On reaching his home, his wife had told him that in the morning there was exchange of words amongst the ladies at Harikaka's (his uncle) place in the Para and there was some quarrel and asked him to go to his uncle's place and inquire as to what was the cause of the quarrel. Therefore, he had gone to his uncle's place at about 8:30 to 8:45 p.m. He had gone through the village to Para and had turned towards the house of his uncle and at that time his uncle came from behind on his motorcycle. Therefore, both stood beneath a neem tree and were talking about the incident that had taken place in the morning.

He has further testified that the incident took place on 10.9.1998. Shanabhai Ranchhodbhai started shouting there “master has come, master

has come”. His family members Trikambhai Ranchhodbhai, Dineshbhai Bhagwandas, Bhalabhai Ranchhodbhai alias Bhagwanbhai Ranchhodbhai, Naranbhai Ranchhodbhai, Shantilal Bhagwandas and Bharatbhai Naranbhai all came with him and started hurling abuses whereupon his uncle told them not to use abusive language. They did not listen to him and hurled even more abuses. Upon hearing the abuses, his uncle's son Vipul had come out and seen them. Trikambhai Ranchhodbhai had a dharia in his hand, Dineshbhai Bhagwanbhai had a spear in his hand and all the rest had sticks with them. He has identified the accused in the Court.

He has further deposed that on seeing the dharia and sticks in the hands of the accused, Vipul was scared and hence he straightaway ran towards the village to call his uncle Ramakaka and his son Gopal and his wife Gangakaki. Therefore, all of them came to the place where the incident had taken place. The incident had taken place in front of his uncle's house. Both

he and his uncle had been assaulted and knocked down. Trikambhai Ranchhodbhai had given him a blow with a dharia. Dineshbhai Bhagwanbhai had caused injury on the leg of his uncle Ramakaka with spear and with sticks. He and his uncle had fallen down and his brother Gopal and others had come there subsequently and the accused persons had attacked them also. His uncle Ramakaka had been injured with the dharia and sticks. On seeing the four of them, that is, him, his uncles Harikaka, Ramakaka and Gopalbhai all lying fallen on the ground his aunts, Devilakaki and Gangakaki were enraged and they picked up pieces of logs lying nearby and started hitting the accused persons indiscriminately and had beaten Trikambhai Ranchhodbhai also. The palms of Ramakaka's hands had been cut off and Ramakaka's hands had been broken by blows inflicted by sticks. Dineshbhai Bhagwandas had struck Ramakaka on the left leg with a spear and the others who were with them, Bharatbhai Naranbhai, Naranbhai Ranchhodbhai, Bhadabhai Ranchhodbhai and Shantilal Bhagwandas had struck them with sticks

till they were almost unconscious. He has further deposed that as Harikaka had fallen down, Trikam Ranchhod had one after the other struck 4 to 5 blows with the dharia on his head and shoulders. As Harikaka had fallen down because of the assault, he had gone to save him and hence Trikam Ranchhod has struck him also on the head with the dharia. The rest of them, Naranbhai Ranchhodbhai, Bhadabhai Ranchhodbhai, that is, Bhagwanbhai Ranchhodbhai, Dineshbhai Bhagwandas, Shantilal Bhagwandas had caused injuries by inflicting stick blows. Trikam Ranchhod and his brothers had fled. He has further deposed that when his brothers, Bhagwandas, Ashokbhai and Trikambhai, came from the village they saw that they had been wounded and hence they had gone to the village and fetched rickshaws and had seated them in the rickshaws and taken them to the Police Station. At the Police Station, after writing a report they were taken to the hospital. He has further deposed that he had signed the complaint and has identified his signature on the complaint which is at Ex.55. He has also

identified the muddamal dharia as the weapon used by Trikambhai Ranchhodbhai and the muddamal spear as that used by Dineshbhai Bhagwandas and the muddamal sticks used by accused Naranbhai Ranchhodbhai, Bharatbhai Naranbhai, Shantilal Bhagwandas and Bhadabhai Ranchhodbhai. He has further deposed that Haribhai and Gopalbhai had been taken to the hospital where they had expired.

14.2. P.W.4, Chimanbhai Prabhudas Parmar, was cross-examined by the learned advocate of the accused at length and in great detail. Lot many suggestions were put to him and all attempts were made by the learned advocate of the accused to see that some slight contradiction is extracted from his cross-examination and a doubt is created in the credibility of the evidence of this witness so that his evidence becomes impeachable. But, this witness has repelled all the suggestions put to him and successfully withstood the test of cross-examination.

15. The prosecution has thereafter examined and relied upon the evidence of P.W.6, Ramabhai Chaturbhai, who is an injured eye witness, Ex.67. He has deposed that on 10.9.1998 at about 8:00 in the morning there was an exchange of words amongst the ladies in connection with drops of water being splashed at Navapara. Haribhai had gone to the school on that day and when he came home in the evening, he learned about the same. On that day at 7:00 in the evening, he had gone from his house to Haribhai's place and both the brothers had sat together and has said to each other that in relation to the exchange of words between the ladies they should not say anything. Thereafter, Haribhai had dropped him at his house on the motorcycle and that he did not know as to where he had gone thereafter in connection with his work.

He has further deposed that he, his wife and his son Gopal were sitting at home, when, at about 9:00 O'clock at night, Haribhai's son Vipul had come to their house from Navapara and told

them that those people have come with sticks and dharia to settle scores. Thereafter Vipul went towards the house of another brother of this witness. He has further deposed that thereafter he, his wife and his son Gopal set out from their house to go to Haribhai's house at Navapara. Before they could reach Haribhai's house, Trikambhai Ranchhodbhai, Shanabhai Ranchhodbhai, Naranbhai Ranchhodbhai, Bharat Naranbhai, Bhagwandas Ranchhodbhai, Dineshbhai Bhagwandas and Shantilal Bhagwandas had started the quarrel with Haribhai. At that time Trikambhai Ranchhodbhai had a dharia in his hand. Dineshbhai Ranchhodbhai had a spear in his hand and except for Shanabhai Ranchhodbhai, who did not have any weapon in his hand, the rest of them had sticks in their hands. When he reached Haribhai's house, Trikambhai Ranchhodbhai dealt 4-5 blows with the dharia on Haribhai's head and the rest of the accused had inflicted stick blows on Haribhai. At that time his nephew Chimanbhai had intervened whereupon Trikambhai Ranchhodbhai tried to hit him on the head with the dharia but Chimanbhai

put his hands across, and, therefore, the dharia first struck his hands and thereafter struck his head whereupon Chimanbhai fell down. He has further deposed that in the meanwhile Gopal intervened whereupon Trikambhai Ranchhodbhai inflicted a blow on his head with the dharia and the remaining accused beat him badly with sticks. Thereafter he intervened, whereupon Trikambhai Ranchhodbhai struck him on the left side of the head with the dharia and thereafter Trikambhai Ranchhodbhai dealt dharia blows on both his hands as a result of which he suffered cut wounds on his hands. Thereafter Bharatbhai Naranbhai struck him on the back of his head with a stick and Dineshbhai Bhagwandas had struck him on the shin of his left leg with a spear. Naranbhai Ranchhodbhai and Bhagwandas Ranchhodbhai hit him on his hands with sticks and fractured both his hands. Thereafter as all of them had been injured, his wife Gangaben and his brother Haribhai's wife Devilaben let loose with clubs and started hitting both these accused, therefore, the accused went away towards their

houses.

He has further deposed that after some time, his nephew Vipul, Bhagwan, Ashok and Vikram had come from the village. As they were injured, the four of them went to the village to fetch rickshaws and after seating the injured in the rickshaws they were taken to Anand Police Station and from the Police Station they were taken to Anand Government Hospital for treatment. As Gopal and Haribhai were seriously injured, they were immediately taken for further treatment to Vadodara, but he was admitted to the Anand Nagarpalika General Hospital for treatment. He has further deposed that on the next day Haribhai expired at Vadodara Hospital while undergoing treatment. Subsequently, 20 days thereafter, Gopal also expired at Vadodara Hospital while undergoing treatment. The complaint in this regard has been lodged by Chimanbhai. He had identified the muddamal articles to be the weapons used in the commission of the offence. He has further deposed that when

Devilaben stepped in with the club, she also had been struck with a stick on her hand and was injured. His wife Gangaben had also sustained injury on her hand. He has identified the accused in the court.

15.1. P.W.6, Ramabhai Chaturbhai, was also cross-examined at length and in great detail by the learned advocate of the accused but nothing substantial which would be of any help to the defence to show that the evidence of this witness is not trustworthy, could be brought out and the suggestions made by the learned advocate of the accused with a view to see that some doubt is created in the prosecution case have been repelled by this witness and he withstood the test of cross-examination successfully.

15.2. On reappraisal of the evidence of P.W.4, Chimanbhai Prabhudas Parmar, Ex.54 and P.W.6, Ramabhai Chaturbhai, Ex.67, it is clear that P.W.4, Chimanbhai, has lodged the complaint and he has testified in the Court as per the version

given by him in the complaint. In the complaint he is consistent with regard to the weapons used by each of the accused and with what weapons the deceased were injured by the accused. As per his say, A-1 Trikambhai Ranchhodbhai was having a dharia and A-6 Dineshbhai Bhagwandas was having a spear in their hands and other accused persons except A-4 Shanabhai Ranchhodbhai were having sticks with them and they inflicted blows on deceased Haribhai as well as deceased Gopalbhai. A-1 had inflicted several blows with the dharia on both the deceased persons and remaining accused persons have given stick blows to both the deceased persons. Similarly, on reappraisal of the evidence of P.W.6, Ramabhai Chaturbhai, it is seen that he is consistent with regard to the injuries caused by the accused to both deceased persons as well as other prosecution witnesses. He is also consistent that A-1 Trikambhai Ranchhodbhai was having a dharia in his hand and A-6 Dineshbhai was having a spear in his hand and A-1 had inflicted several blows with the dharia on both the deceased persons and the remaining

accused persons have also attacked both the deceased persons with sticks. Both these witnesses are consistent regarding the injuries sustained by them as to who has inflicted blows on them. Their evidence is consistent with the evidence of P.W.1, Dr. Arvind Jethabhai Dalvadi, Ex.29. Their evidence is also consistent with the evidence of P.W.2, Dr. Ranjit S. Choudhary, Ex.45 who has treated both deceased persons at SSG Hospital, Vadodara. Their evidence is also consistent with the evidence of P.W.3, Dr. Kishor Promodbhai Desai, Ex.49 who conducted postmortem examination on the dead bodies of both the deceased persons.

15.3. On a conjoint reading of the evidence of both these witnesses, along with the evidence of P.W.1, Dr. Arvind Jethabhai Dalvadi, P.W.2, Dr. Ranjit S. Choudhary and P.W.3, Dr. Kishor Promodbhai Desai, it is seen that both these witnesses have not exaggerated anything in their evidence. Whatever they have stated before the Court in their oral testimonies have been

reflected in the injury certificates as well as in the post mortem reports. Therefore, there is no reason to discard the evidence of both these witnesses. According to this court, both these witnesses are termed as star witnesses. Their oral testimonies alone are sufficient to come to the conclusion that the accused party were the aggressors and they were mindful to take revenge for the incident which had occurred in the morning and, therefore, they formed an unlawful assembly, armed with deadly weapons, in furtherance of their common object to attack the complainant party, and came near the house of deceased Haribhai where Haribhai and Chimanbhai were standing and were talking inter-se about the incident which had taken place in the morning. Thereupon the accused abused them and on Haribhai telling them not to abuse them, all of a sudden, they attacked Haribhai as well as P.W.4, Chimanbhai with the dharia, spear and sticks and thereafter when Gopalbhai as well as his father Ramabhai and his wife Gangaben came there and intervened, they were also inflicted blows by the

accused party and injuries were caused to them. When the accused party started abusing Haribhai and Chimanbhai, P.W.7, Vipul Haribhai Parmar, Ex.68 straightway rushed to the village to call Ramabhai, his wife Gangaben and Gopalbhai. Therefore, all of them came to the place where the incident had taken place and as Gopalbhai and Ramabhai tried to intervene and rescue Haribhai, A-1 inflicted blow with dharia on the head of Gopal whereas A-2 Bharat Naranbhai inflicted stick blow on Gopal.

16. The prosecution has thereafter examined and relied upon the evidence of P.W.7, Vipul Haribhai Parmar, Ex.68. He has, inter alia, testified that the incident took place at about 9:00 p.m. near their house. On the day of the incident his father had gone to Ajarpur village for his service at about 8:30 to 9:00 and had returned at 6:00 p.m. and was present at home when his uncle Ramakaka came to inquire about his father's health as he was suffering from pain in the legs since two weeks. On that day, as quarrel

had taken place with regard to splashing of water, to obtain information in that regard also he had come. As his father was not present when the quarrel had taken place in the morning, after Ramakaka's arrival they, that is, the family members had told them about the quarrel. Thereafter as his father had some work in the village, he had dropped Ramakaka at his house on his motorcycle and gone to attend his work. Despite it being late, his father had not returned and hence he and his mother had started having their dinner. Meanwhile, at about 9:00 p.m. they heard noise of some quarrel taking place outside, whereupon he, his mother and his brother Shailesh, three of them came out to see what was happening and they saw that his father had been surrounded by the accused who are present in the court and out of them Trikambhai Ranchhodbhai had a dharia in his hand. Dineshbhai had a spear in his hand and the rest of them had sticks in their hands. Those people were quarrelling with his father and hurling abuses. He had felt that the accused would assault his

father and hence he had immediately gone to his uncle Ramakaka's house to call him. After informing at Ramakaka's house he had gone to inform at the house of his another uncle Prabhudasbhai. He has further deposed that in the meanwhile, his uncle Ramakaka, his aunt and his cousin Gopal had proceeded towards his house. Upon giving the news at Prabhukaka's house he and his brothers Ashok, Trikam and Bhagwanbhai had gone towards their house. When they reached there, they saw his father and his brother Gopal lying on the ground in an unconscious condition and Ramakaka, Gangakaki, his mother Devilaben and Chimanbhai had been injured.

He has further deposed that on seeing them the accused had fled from there and as these people had been injured they had fetched rickshaws and after seating the injured in the rickshaws they took them to the Anand Police Station where Chimanbhai had lodged the complaint after which the injured had been taken to Anand Municipal Hospital for treatment. Out of them, as his

father Haribhai and cousin brother Gopal had sustained serious injuries, they were taken to Vadodara. On the next day his father expired at the Hospital while undergoing treatment. After about a month, his brother Gopal also expired at the hospital due to the injuries sustained by him during the incident.

16.1. This witness was also cross-examined at length and in great detail by the learned advocate of the accused. A lot of suggestions were put to him that he had never gone to call Ramabhai and he was very much present from the beginning in his house and he was one of the members of the unlawful assembly of the complainant party. He has repelled all the suggestions and successfully withstood the test of cross-examination.

16.2. Mr. Barot, learned advocate of the accused, referring to the evidence of P.W.7, Vipul Haribhai Parmar, has tried to convince the Court that the prosecution has fabricated his

evidence with a view to make out a false case that the complainant party was not the aggressors. According to him, Vipul was very much present at the scene of incident from the very beginning armed with weapon. The aforesaid submission of Mr. Barot is absolutely feeble in nature and has no basis in view of the consistent evidence of prosecution witnesses.

16.3. He has also tried to point out that if Vipul had left the place before the actual physical attack had started on the complainant party, then it was not possible for him to call deceased Gopalbhai and injured Ramabhai and Gangaben within the short span of time, looking to the distance of their house from the place of incident which is more than 1 Km. and they could not have come to the place of the incident at the time of the actual attack as the attack had not lasted more than 5 to 10 minutes. According to Mr. Barot, on the contrary, all the persons of the complainant party were present from the very beginning at the place of incident. This

submission is also not convincing. According to us, if Vipul had started running to call his uncle on hearing the abuses from the accused party, it was not impossible for him to call Ramabhai, Gangaben and Gopal within five minutes in view of the fact that the distance of their house was about 1 Km. from the place of incident.

16.4. The sum and substance of the submission of Mr. Barot is that the complainant party were the aggressors and all of them were present at the place of occurrence from the very beginning, armed with weapons, which according to us, is absolutely meritless.

16.5. On close scrutiny and reappraisal of the evidence of P.W.7, Vipul Haribhai Parmar, it is seen that he has nowhere stated that he saw the accused inflicting injuries on his father or anybody. Immediately when the accused started abusing his father, he ran towards the village to call Ramabhai, Gangaben and Gopal and after

informing them about the incident, he went to the house of his another uncle to inform the said news. He is consistent in his evidence that after informing Ramakaka he had gone to inform his another uncle Prabhudas and meanwhile his uncle Ramakaka, Gopalbhai and Gangaben had proceeded towards his house. Upon giving the news at Prabhukaka's house, Vipul and his brothers Ashok, Trikam and Bhagwanbhai had gone towards their house. When they reached there they saw his father and his brother Gopal lying on the ground in an unconscious condition and Ramakaka, Gangakaki, Chimanbhai and his mother Devilaben had been injured.

16.6. We find the aforesaid evidence of P.W.7, Vipulbhai Haribhai Parmar quite natural and he has not exaggerated the version. Therefore, according to us, there is no reason to discard his oral testimony and his evidence is trustworthy and reliable.

17. The prosecution has thereafter examined

and relied upon the evidence of P.W.8, Devilaben Haribhai, widow of Haribhai, Ex.69. She has, inter alia, testified that her husband Haribhai was working as a teacher at the High School at Ajarpura village. He used to leave on his scooter at 8:00 in the morning and return in the evening at 6:30. Trikambhai Ranchhodbhai lives next to their house in the Navapara area.

She has further deposed that the incident took place on 10th September at about 9:00 p.m. On that day in the morning the accused had splashed drops of water from his vehicle on her daughter-in-law's son on account of which there was exchange of words and a quarrel had taken place and she had come out to see, whereupon they had abused all of them. The incident had taken place at 9:00 p.m. in the open space outside their house. At 9:00 O'clock at night, Trikambhai Ranchhodbhai, Naranbhai Ranchhodbhai, Bhala Ranchhod, etc., who are present in the court, all the accused had come to the open space outside their house and were hurling abuses. As there was

some noise she had come out of the house and told the accused not to hurl abuses. Whereupon the accused who had come with weapons, straightaway attacked them. Out of the accused, Trikam Ranchhod had a dharia and the rest of them had sticks in their hands. When these people were hurling abuses, she and her sons were inside the house. On commotion taking place, she and Vipul both came out and on seeing them fighting her son Vipul went to call her brother-in-law from the village. Whereupon her brother-in-law Ramabhai, his son Gopal and her sister-in-law Gangaben had come to their place. Meanwhile when her brother-in-law, sister-in-law and Gopal came there, the accused, that is, Trikambhai, Naranbhai and his sons had launched an attack on them. Naranbhai Ranchhodbhai, Trikambhai Ranchhodbhai, Bhadabhai Ranchhodbhai, Mafatbhai Bhadabhai, Shantibhai Bhadabhai, Bharatbhai Naranbhai had attacked her husband. Her husband had sustained dharia injuries on the head and shoulders and her brother-in-law, Ramabhai had sustained injuries on the head, hand and thigh during the incident.

Gopal had sustained injuries on the head as stick blows had been inflicted on him. An attempt was made to strike her with a dharia, but she had dodged the blow and her nephew Chimanbhai was injured on the head. She had sustained stick injuries on the head and hands, which had been inflicted by Bharat. The accused were in their compound at that time and were assaulting them. She was present in the compound when her husband had sustained injuries on the shoulder and head. Trikambhai Ranchhodbhai had dealt dharia blows on her husband due to which he had fallen down. Trikambhai Ranchhodbhai had also caused injuries to Ramabhai by inflicting dharia blows due to which he had also fallen own. Shantibhai, Mafatbhai and Bharatbhai had dealt stick blows on Gopal's head due to which he had been injured.

She has further deposed that on the happening of the incident and her husband and brother-in-law, etc., having fallen down due to injuries, she and her sister-in-law Gangaben picked up clubs which were lying there and started hitting the accused,

due to which they had run away. Thereafter her two sons came and fetched rickshaws. She, her husband and her son were seated in one rickshaw and her brother-in-law Ramabhai, her sister-in-law Gangaben and Gopal were seated in the other rickshaw and had straight away gone to the police station. After lodging the complaint they were taken to the Government Hospital for treatment. As her husband and Gopal had been seriously injured, they were taken to Vadodara for further treatment. As a result of the incident, her husband had expired while undergoing treatment. Gopal had also expired while undergoing treatment. She has identified the accused in the Court.

18. The prosecution has thereafter examined and relied upon the evidence of P.W.9, Gangaben Ramabhai, sister-in-law of deceased Haribhai and eye witness, Ex.71. She has, inter alia, testified that the incident had taken place at 8:30 at night, three years prior to the recording her evidence. Her nephew Vipul had come to their

house to call them. He had told them that Trikam Ranchhod, etc., the accused persons in this case (she has named all the accused in the Court which had been taken note of by the Court), had come and were quarrelling, therefore, they should come. Therefore, she, her husband and son Gopal had gone near her brother-in-law's place at Navapara. She had seen that accused Trikambhai Ranchhodbhai had a dharia in his hand and he had dealt one blow on Haribhai's shoulder and one on his head, due to which Haribhai fell down and was bleeding. She has further deposed that she has also seen accused Trikambhai inflicting a blow with the dharia on the head of her nephew Chimanbhai, due to which blood was oozing from his head and he fell down. On his falling down, accused Bharatbhai inflicted stick blows on Chimanbhai's shoulder and hand. Thereafter, Trikambhai had struck the dharia on the head of her son Gopal as he had intervened to save the others. The rest of the accused Bhagwandas, Shantilal, Bharatbhai, etc., started assaulting Gopal with sticks and hence Gopal fell down and

was bleeding. The accused Naranbhai, Bhagwanbhai, Bharatbhai and Shantilal had inflicted stick blows on her husband and fractured his hands. Therefore, as all of them had been injured, she and her sister-in-law Devilaben picked up wooden logs lying nearby and started hitting the accused. Hence, the accused had fled. During the course of the assault, accused Bharatbhai had struck her on her right hand with a stick and she had also been injured on the right hand with the spear the accused Dineshbhai had in his hand.

She has further deposed that thereafter Vipul, Trikambhai, Ashokbhai and Bhagwanbhai had fetched two rickshaws from the village. Her brother-in-law Haribhai, her sister-in-law Devilaben and her son Gopal and nephew Chimanbhai were seated in one rickshaw and she and her husband were seated in the other rickshaw. They had taken both the rickshaws to the police station first. Chimanbhai had lodged the complaint there and thereafter they had been sent to the hospital for treatment, where they were given treatment. She has also

been given treatment.

She has further deposed that her husband had been treated at the Anand Nagarpalika Hospital whereas her brother-in-law and her son Gopal who were seriously injured, had been taken to Vadodara for further treatment.

She has further deposed that she does not know the cause of the incident. The accused belong to her village and she knows all of them by appearance. She has identified accused Shanabhai Ranchhodbhai who alone was present in the Court on that day. She has further deposed that she can recognize all the others. She has further deposed that her brother-in-law and Gopal had been admitted to Vadodara Hospital but while undergoing treatment, her brother-in-law, Haribhai had expired on the next day and her son had expired after 20 days while undergoing treatment. She has identified the muddamal and has further stated that the police had recorded her statement.

18.1. Both P.W.8, Devilaben and P.W.9, Gangaben were cross examined by the learned advocate of the accused at length and in great detail. Lot many suggestions were put to them suggesting that the complainant party was the aggressors, they armed with deadly weapons, formed an unlawful assembly in furtherance of their common object to take revenge against the accused party for the incident which had taken place in the morning and assaulted the accused party. All these suggestions were repelled by both of them and they have successfully withstood the test of cross-examination and the defence could not make out any point in their favour from their cross-examination.

19. On reappraisal of the evidence of P.W.8, Devilaben and P.W.9, Gangaben, it is clear that they have explained as to how the accused party sustained injuries. Both these witnesses have stated that they hit the accused persons with wooden logs and thereafter the accused persons

left the place of incident and went towards their house.

19.1. Mr. Barot, learned advocate of the accused, after referring to the evidence of both these witnesses, emphasized that they were not present at the scene of occurrence. According to him, had they been present there, they would have also received grievous injuries at the hands of the accused. Since both these witnesses have not sustained grievous injuries, it is clear that they were not present at the place of the incident and, therefore, the prosecution evidence is suffering from serious infirmities.

19.2. The above submission made by Mr. Barot is not at all convincing. As per the evidence of both these witnesses, they had beaten the accused persons with wooden logs and they had also thrown wooden logs on them. In the meanwhile, a crowd had assembled there on account of the commotion and, therefore, the accused fled from the scene of offence. Of course, both Devilaben and

Gangaben had also received simple injuries at the hands of the accused party which are reflected from the medical certificates issued by P.W.1, Dr. Arvind Jethabhai Dalvadi.

21. The prosecution has thereafter examined and relied upon the oral testimony of P.W.10, Abhaysinh Lalubhai Vaghela, Ex.76. He has deposed that on 10.9.1998, he was discharging duties as P.S.I. at Anand Rural Police Station. On that day, while he was on duty, he had received a message from the P.S.C. that there had been an altercation between two groups at Gana village and hence he had gone to the Municipal Hospital. He has further deposed that prior to that two of the injured Haribhai Chaturbhai and Gopalbhai Ramabhai had been shifted from the Municipal Hospital to S.S.G. Hospital at Baroda for further treatment. Hence, he had returned to the Police Station and in his presence, injured Chimanbhai Prabhudas had lodged the complaint in connection with the incident and the same was recorded as stated by him. He has further deposed that

thereafter the contents of the F.I.R. were read over to him and he had admitted that the same were true and signed the same, and he had made the endorsement to the effect that the same had been signed in his presence and put his signature below the same. Thereafter, he had forwarded the complaint with his report to the P.S.O. for registering offence on the basis of which the P.S.O. had registered the F.I.R. as Anand Rural Police Station C.R.No.I-204/98 for the offences punishable under Sections 307, 147, 148, 149, 504, etc., of IPC and deputed him for further investigation and he had taken charge of the investigation and gone to the Anand Municipal Hospital. The said FIR has been produced vide Ex.55. At the hospital, Dineshbhai Bhagwanbhai had lodged a complaint before him and he had recorded the same as stated by him and forwarded the same to the P.S.O. along with his report for the purpose of registering the offence. On the basis of the complaint, the P.S.O. registered the FIR as Anand Rural Police Station CR No.I-205/98 for the offences punishable under Sections 326,

147, 148, 149, 504, etc., of IPC and handed over the investigation to him. The said FIR has been produced vide Ex.28.

He has further deposed that thereafter on 11.9.1998 at 7:00 hours he had gone to the scene of offence and drawn a panchnama of the scene of offence in presence of panchas. He had also collected samples of bloodstained earth and control earth and seized a helmet and wristwatch from the scene of offence. The said panchnama has been produced vide Ex.60. Thereafter he had recorded the statements of witnesses who were conversant with the facts regarding the incident as stated by them. He has further deposed that in this case in all six persons had been injured out of whom two had expired. Thereafter the accused willingly surrendered themselves along with the weapons used by them in the commission of the offence at the Gana Gram Panchayat and hence panchnama of their physical conditions as well as seizure of the weapons and the clothes worn by them was drawn in presence of panchas and they

were arrested in connection with this offence. The panchnama has been produced vide Ex.60.

He has further deposed that thereafter as two of the injured persons in this case had been admitted to S.S.G. Hospital at Baroda he had gone to S.S.G. Hospital at Baroda for recording their statements, and upon inquiry he had found that both the patients were unconscious and hence he could not record their statements, but Devilaben, wife of injured Haribhai Chaturbhai, had handed over the bush shirt worn by Haribhai and the same was seized by drawing a panchnama in presence of panchas which is produced vide Ex.62. Thereafter he had returned to Anand Rural Police Station. On 12.9.1998, a telephone vardhy was received from the S.S.G. Hospital, Vadodara that injured Haribhai Chaturbhai had expired while undergoing treatment, pursuant to which he had gone to S.S.G. Hospital and drawn the inquest panchnama in presence of panchas which is produced vide Ex.75. Thereafter the dead body was sent for the purpose of post mortem examination to the Medical

Officer, S.S.G. Hospital along with the inquest panchnama, Marnotar Form and Police Yadi. He has further deposed that after the post mortem examination of the dead body had been carried out, the same was handed over to his relatives for the last rites. Thereafter, the Police Constable produced the clothes of the deceased which were seized in presence of panchas by drawing panchnama which is produced vide Ex.63. Thereafter a report was submitted to the learned JMFC for addition of Section 302 IPC and the accused were sent to judicial custody within the statutory time limit. Thereafter the muddamal seized in connection with this case was forwarded to the FSL for analysis vide forwarding letter Ex.77.

He has further deposed that thereafter one accused Naranbhai who had not been apprehended till then, surrendered at the Police Station along with the weapon used in the commission of the offence and hence the same was seized by drawing a panchnama of his physical condition in

presence of panchas and he was arrested. The panchnama is produced vide Ex.64. He has further deposed that subsequently a message was received from S.S.G. Hospital that injured Gopalbhai Ramabhai had expired during the course of treatment and hence he had gone to S.S.G. Hospital and prepared the inquest in presence of the Executive Magistrate and drawn panchnama accordingly. He has further deposed that the dead body was sent to the Medical Officer, S.S.G. Hospital for conducting post mortem examination along with inquest panchnama, Marnotar Form and Police Yadi. The inquest panchnama has been produced vide Ex.59. Thereafter he had obtained the Medical Certificates of the injured persons in connection with this case and kept them in the investigation file. Subsequently, he had received the post mortem note of deceased Haribhai Chaturbhai and hence he had kept the same in the investigation file. Thereafter as there was sufficient evidence against the accused, he had submitted the charge sheet before the concerned Court.

He has further deposed that the F.S.L. papers have been produced vide Exs.78 to 81. Thereafter, post mortem note of deceased Gopalbhai Ramabhai was received and the same was kept in the investigation file. He had sent a report to the Circle Inspector for preparing a map of the scene of offence on 13.9.1998, which is produced vide Ex.82. He has identified the seven accused present in the Court as well as the muddamal articles No.1 to 17.

21.1. P.W.10, Abhaysinh Lalubhai Vaghela, was cross-examined by the learned advocate of the accused at length and in great detail. He has repelled all the suggestions put to him and withstood the test of cross-examination successfully and nothing substantial which would be of any help to the defence could be brought out from his cross-examination.

22. On over all reappraisal of the evidence of the prosecution witnesses, it is clear that fatal

injuries to both the deceased persons were caused by A-1, Trikambhai Ranchhodbhai, because he was having a dharia with him whereas A-6, Dineshbhai was having a spear in his hand and the remaining accused were having sticks with them and all of them have freely used those weapons for causing injuries to both the deceased persons and other injured prosecution witnesses. The fatal injuries sustained by both the deceased persons are reflected from the medical certificates issued by P.W.1, Dr. Arvind Jethabhai Dalvadi and P.W.2, Dr. Ranjit S. Choudhary and the post mortem report prepared by P.W.3, Dr. Kishor Promodbhai Desai. Similarly, A-1 and other accused persons have also caused grievous hurt to P.W.4, Chimanbhai Prabhudas and and P.W.6, Ramabhai Chaturbhai and simple hurt to P.W.8, Devilaben and P.W.9, Gangaben.

23. In view of the aforesaid factual background and in view of the fact that A-1, Trikambhai Ranchhodbhai, had a dharia with him whereas A-6, Dineshbhai Bhagwandas Parmar, had a

spear with him and A-2, Bharatbhai Naranbhai Parmar, A-3, Bhagwanbhai Ranchhodbhai Parmar, A-5, Shantilal Bhagwandas Parmar and A-7, Naranbhai Ranchhodbhai Parmar, had sticks with them, and they had inflicted several blows with them on the complainant party, some of which were fatal in nature, now let us examine as to whether Section 149 IPC can be invoked in respect of other accused persons and hold them vicariously liable for committing the offence of murder punishable under Section 302 IPC.

24. The question as to when, why, how and under what circumstances, Section 149 IPC can be applied on the facts and circumstances emerging from the record of a particular case, has been aptly, succinctly and elaborately explained by the Supreme Court in its latest decision in the case of Mummidi Hemadri v. State of Andhra Pradesh, reported in 2007 AIR SCW 4507. In the said case, the Supreme Court, after referring to its two earlier decision in the case of Chikkarange Gowda and others v. State of Mysore,

AIR 1956 SC 731 and Chanda and others v. State of U.P. and another, (2004) 5 SCC 141, has, in paragraphs 13, 14 and 15, observed as under:

> "13. The pivotal question is applicability of Section 149 IPC. Said provision has its foundation on constructive liability which is the *sine qua non* for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141 IPC. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149 IPC. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141 IPC. It cannot be laid down as a general

proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141 IPC. The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object'

as appearing in Section 149 IPC have to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly.

14. 'Common object' is different from a 'common intention' as it does not require a prior concert and a common meeting of minds

before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The 'common object' of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may

subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words, it can develop during the course of incident at the spot *eo instante*.

15. Section 149 IPC, consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was a member. Even if the offence committed is not in direct prosecution of the

common object of the assembly, it may yet fall under Section 141 IPC, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard and fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly,

arms it carries and behaviour at or before or after the occurrence. The word 'knew' used in the second limb of the section implies something more than a possibility and it cannot be made to bear the sense of 'might have been known'. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 IPC, cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part.

> However, there may be cases which would be within first part of the offences committed in prosecution of the common object would also be generally, if not always, within the second part, namely, offences which the parties knew to be likely committed in the prosecution of the common object."

25. It is settled principle of law that for application of Section 149 IPC, the prosecution has not to prove the definite role played by each of the accused persons. In this connection, it is profitable to refer to a judgment of a Four Judge Bench of the Supreme Court in the case of Masalti v. State of U.P., AIR 1965 SC 202, wherein, in paragraph 15, the Supreme Court has observed as under:

> "15. Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. The criticism

again is not well founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal courts have to

do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not."

25.1. To the similar effect is the observation of the Supreme court in the case of Lalji v. State of U.P., (1989) 1 SCC 437. In paragraph 8 of the said judgment, the Supreme Court has observed as under:

"Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case."

25.2. In the case of State of U.P. v. Dan Singh, (1997) 3 SCC 747, after referring to the case of Lalji's case (supra) the Supreme court has observed as under:

> “While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149.”

26. Applying the principles laid own by the Supreme Court in catena of decisions, some of which are referred to hereinabove, to the facts of instant case and also reappreciating the evidence of the prosecution witnesses which we have dealt with in the earlier paragraphs of this judgment in extenso, there is no manner of doubt that Section 149 IPC has to be applied in the instant case read with Section 302 IPC for commission of the offence of murder of two persons i.e., Haribhai and Gopalbhai, the result of which would be that it has to be held that all the accused persons have formed an unlawful assembly, armed with deadly weapons and in furtherance of their common object to murder two persons of the complainant party and to cause grievous hurt to two persons and hurt to other

two persons of the complainant party, assaulted them and in that attempt they succeeded and, therefore, all the accused are guilty of the offence punishable under Section 302 read with Section 149 IPC.

27. So far as other offences are concerned, we have recorded in earlier paragraphs of this judgment that all the accused have played role in causing grievous hurt and hurt to the complainant party. Therefore, they are to be held liable for the offences committed by them.

28. So far as the judgments relied upon by Mr. Barot, learned advocate of the accused, are concerned, they rest on the facts of those cases. The principle laid down therein is that in case the prosecution has suppressed the genesis and origin of the crime and if the incident has arisen out of free fight between two groups and it was not possible for the prosecution to point out as to who were the aggressors, the benefit of doubt may be given to the accused. In instant

case, the prosecution has been able to establish, with cogent and convincing evidence, that the accused party were the aggressors. The prosecution has also been able to establish that it has not suppressed the genesis and origin of the crime. Therefore, the facts of those cases cannot be equated with the facts of instant case and hence the judgments relied upon by Mr. Barot cannot be made applicable to the facts of the present case. Moreover, it is also a settled principle of law that outcome of the criminal trial depends upon the facts and circumstances arising out of the very case and, therefore, we deemed it expedient not to refer to the ratio laid down in those judgments relied upon by Mr. Barot in this judgment with a view not to burden this judgment any more.

29. The long and the short of the prosecution case, if one delve into it, in sequence, is the incident of drops being splashed by the accused party on one of the relatives of the complainant party while taking out the vehicle which had got

stuck on the road, in the morning of the day of the incident. In respect of this petty incident, woman-folks of both the sides fought with their tongues and in that brawl they exchanged hot words, the meaning of which one may not find in most of the dictionaries, and after exhibiting their expertise in that line and, may be, after exhausting their vocabulary, they dispersed.

29.1. In the evening when Chimanbhai, the complainant, came to know about the said incident, he had gone to the house of his uncle Haribhai. On the way, he saw Haribhai coming from behind on his motor cycle. Thereafter they were standing under a neem tree and were talking inter-se about the incident that had happened in the morning. It was about 9 P.M. At that time the accused party, except A-4 Shanabhai, who were armed with deadly weapons, opened a furious stream of invective on Haribhai. Haribhai told them to hold their tongue. This had the effect of fanning the fire. The commotion attracted P.W.8, Devilaben Haribhai and P.W.7, Vipul Haribhai, who

were having their supper. On seeing the accused party armed with deadly weapons, Vipul felt that they would attack his father any time and, therefore, with a view to have help from his relatives, he rushed towards the house of P.W.6, Ramabhai and informed him about the incident and thereafter Vipul rushed to Prabhudas's house, who is also one of his uncles, to inform him about the incident. By that time, at the place of occurrence, the accused party had assaulted Haribhai with dharia and sticks. P.W.4, Chimanbhai, the complainant, intervened and the accused party assaulted him also. On getting the message from P.W.7, Vipul, P.W.6, Ramabhai, P.W.9, Gangaben and their son Gopal, immediately rushed towards the house of Haribhai. The incident in question lasted only for about five minutes and when they reached there, they found that the accused party were assaulting Haribhai and Chimanbhai. Gopal tried to rescue Haribhai and the accused party assaulted him also with deadly weapons. On seeing this, P.W.6, Ramabhai intervened and he was also injured by the accused

party with deadly weapons. Thereupon P.W.8, Devilaben and P.W.9, Gangaben, both started throwing wooden logs on the accused persons and they also started beating them. Before leaving the scene of incident, the accused party had inflicted blows on the ladies also.

29.2. Because of the serious injuries on head, Haribhai became unconscious and Gopalbhai was on concussion and he regained his consciousness after some time as is clear from the record that when he was at S.S.G. Hospital, he was conscious and was able to speak.

29.3. After the incident, all of the injured persons were taken to Anand Rural Police Station and a complaint was registered and thereafter they were sent with a yadi to Anand Municipal General Hospital for treatment. Haribhai and Gopalbhai had serious injuries and, therefore, they were shifted to SSG Hospital, Baroda where both of them died during the course of treatment. Haribhai died within 24 hours and Gopal succumbed

to the injuries within a month while undergoing treatment. P.W.4 Chimanbhai and P.W.6, Ramabhai, had grievous injuries whereas P.W.8 Devilaben and P.W.9, Gangaben had suffered minor injuries.

29.4. This is a classic case of a storm in a tea cup. For a petty incident, two persons have lost their lives. Human-being is a 'social animal'. From the prehistoric period onwards, he wanted to enjoy all pleasures of life and wanted to show strength at any cost and whatever came as an obstruction in his way, he defeated it. Might was the law. Gradually he came to be socialized and when the might has given way to socially accepted rules and regulations, he made the animal in him slept mainly because of the fear of the unwritten rules of the society in which he lives and also because of the written laws of the land and has reached upto this stage. But in every human being, though dormant, still there is an animal. If the prefix 'social' is cut for myriad reasons, he becomes an animal and goes back to his original form, in which he was in the

'stone age' or 'iron age'. When the emotions rule the brain, the brain closes its door and thereby the power of cognition and wisdom becomes weak; emotions heat the blood and when the blood is on fire, the animal dormant in him wakes up from the deep slumber and pounces upon his enemy. This is what has happened in instant case. Was it so serious an incident which had happened in the morning that human blood had to be flown? Along with the hot blood that has flown from the injuries of Haribhai, the dreams and happiness of so many other persons have also flown away and amongst that one was the vermilion which adorned the forehead of Devilaben, that she had preserved religiously and with all sanctity, and she has been pushed into the category of which not a single married woman would have thought of even in her wildest dream, a widow. The two persons, husband and wife, who had faced the smooth and rough together for long years, are separated at the cruel hands of the accused party, for which they have to take the rap.

29.5. So far as P.W.6, Ramabhai and P.W.9, Gangaben are concerned, it is not abstruse in which position they would have been placed after death of their son Gopal. The one who should have become solace at their old age, the one who should have set fire to their pyres at the end of their life, as a right, has left them prematurely. This case shows that no one can change destiny. The one who should have travelled his last journey, putting an end to his earthly life, on the shoulder of his son was compelled to carry his son on his weak shoulders at his last journey. Only the one who wears shoe knows where the shoe bites.

30. Now we shall deal with each and every contention raised by Mr. Manubhai Barot, learned advocate of the accused before us and also the contentions raised by the accused party in their written statement filed before the trial Court, separately, in seriatim.

(A) The contention of Mr. Barot that the

prosecution has suppressed the genesis and origin of the crime and has not presented the true facts before the Court, cannot be accepted because from what is stated above, it is clear that the prosecution has come out with the true genesis and origin of the crime. Moreover, the accused have not come with any other theory.

(B) So far as the contention of Mr. Barot that the complainant party has formed an unlawful assembly, armed with deadly weapons in furtherance of their common object to attack the accused party and they were the aggressors, cannot be accepted in view of the fact that the prosecution has successfully established that the accused party were the aggressors. What on earth were they doing with those deadly weapons at 9 P.M., near the house of deceased Haribhai, is not explained by the accused party. It is very clear from the record, as it stands, that none of the members of the complainant party was having any weapon with them. Haribhai and Chimanbhai were standing under a neem tree. They were not armed

with any weapon. Ramabhai, Gopal and Gangaben, who came to the place of Haribhai subsequently, were not having any weapon with them. Though Devilaben came from her house to the scene of offence, she also did not carry any weapon with her. This clearly establishes that the complainant party had no intention to assault the accused party and on the contrary, the accused party were the aggressors.

(C) So far as the contention of Mr. Barot that the prosecution has not explained the injuries on the person of all the accused is concerned, the prosecution has been able to establish that the accused party received injuries because they were beaten by Devilaben and Gangaben by wooden logs, which were, by chance, lying near the place of incident, just with a view to see that the accused party may not assault the complainant party any further.

(D) So far as the contention of Mr. Barot that it was a case of a free fight between two groups and

since the prosecution has not come with the true and correct facts, the prosecution has failed to prove the charges levelled against the accused persons has no merit and deserves to be rejected because the evidence on record clearly establishes that the attack was started by the accused party and it is they who have put an end to it and fled from the scene of offence after inflicting blows on P.W.8, Devilaben and P.W.9, Gangaben.

(E) The contention of Mr. Barot that there is a defence version that the prosecution has not been able to explain the injuries on the accused persons and the said version is probable and is capable of raising doubt on the prosecution case, is also without any substance. The defence version is far from truth and it not at all probable and not capable for raising doubt in the prosecution case. The attempt to create a doubt in the prosecution case by raising a baseless defence, is vanished like the mist on the rising of the sun and the prosecution has been able to

establish its case beyond all doubts. The prosecution has proved that all the injuries on the accused were the result of the beating given to them by Devilaben and Gangaben.

(F) So far as the contention of Mr. Barot that there are lots of improvements in the evidence of the prosecution witnesses in respect of what they have stated in the complaint, in the Court as well as in their police statements, is of no avail to the defence to convince this court to take a view in favour of the accused. Naturally, when there are so many witnesses and all of them have reached at the scene of offence at different time and all of them have viewed the incident from different angles, simple contradictions as to which blow was inflicted by which accused, who inflicted the first blow, who inflicted the second, who reached at the place of incident first, etc., are of no significance. Hence, this submission is also merit less.

(G) So far as the contention of Mr. Barot that

since a doubt is raised in the prosecution case, the accused persons are entitled to the benefit of doubt, cannot be accepted in view of the simple fact that the defence could not raise any doubt in the prosecution case and the prosecution case is as clear as day light and we find no room for doubt in the prosecution case.

(H) The contention of Mr. Barot that injured Gopalbhai died after about a month and there is evidence to the effect that had he been given proper treatment, he would not have died, is also of no help to the accused because the doctors at SSG Hospital gave proper treatment to him and there was no reason for the parents of Gopalbhai not to provide proper medicines, etc., to him and as such there is no evidence on record to support the above submission of Mr. Barot.

(I) The contention of Mr. Barot that the accused persons exercised their right of private defence as they were attacked by the complainant party after forming an unlawful assembly, armed with

deadly weapons, in furtherance of their common object to take revenge upon the accused persons, cannot be accepted because as discussed above and as is clear from the evidence on record, the accused party were armed with deadly weapons and the complainant party were unarmed and the accused party were the aggressors and, therefore, this contention is required to be thrown into the the basket where such baseless contentions best deserve to take rest.

(J) So far as the contention of Mr. Barot that there are lots of omissions, contradictions and improvements in the evidence of the prosecution witnesses and they have contradicted with the other prosecution witnesses, also deserves rejection in view of the fact that they all reached at the place of incident at different time, they were all beaten up by the accused persons and, therefore, in such a situation, minor contradictions are bound to be there in their deposition in Court and in their police statements and such contradictions, which are so

negligible, on the contrary show that they have deposed what they have witnessed and they were not tutored.

(K) So far as the contention of Mr. Barot that since Haribhai died on the next day of the incident and Gopalbhai died after about a month, the offence may be treated as a case of culpable homicide not amounting to murder punishable under section 304 Part I IPC, and since the accused persons have already undergone imprisonment for more than nine years, the custodial sentence may be treated as substantive sentence, also cannot be accepted in view of the facts and circumstances of the case.

(L) So far as the contention raised by the accused party in their written statement that Haribhai had come for attacking the accused party wearing helmet, cannot be accepted because it has come in evidence that Haribhai had gone to drop Ramabhai at his house on his motorcycle and when Chimanbhai, the complainant, was going towards

the house of Haribhai, he found him coming from behind, on the motor cycle. Naturally, when he was riding the motor cycle he would have carried the helmet with him and this clearly shows that the prosecution has come with clean and clear case and there is no room for doubt in the prosecution case.

(M) The contention that all the complainant party were present at the scene of offence from the very beginning cannot be accepted in view of the evidence on record. At the initial stage, the persons present at the scene of offence were, all the accused persons, Haribhai and Chimanbhai, the complainant. Thereafter, Gopalbhai, Ramabhai and Gangaben came at the place of offence. After that Devilaben came. The contention that Vipul was throughout present at the scene of offence cannot be believed because on seeing that the accused party had gathered there with dangerous weapons, he felt that they would attack Haribhai at any time and, therefore, he immediately rushed towards the house of Ramabhai. Had he been

present at the scene of offence, naturally, as the son of Haribhai, when the accused had started assaulting Haribhai, Vipul would have intervened and the accused party would not have spared him. But Vipul did not suffer any injury on his person because he came at the scene of offence after the assault was over and the accused party had left the scene of offence.

(N) The contention of the accused party in their written statement that though several persons had gathered at the scene of offence, none from the crowd was examined by the prosecution, has no substance. It is, no doubt, true that the prosecution is bound to produce witnesses who are essential to the unfolding of the narrative on which the prosecution is based. Apart from that, it cannot be laid down, as a rule, that if a large number of persons are present at the time of the occurrence, the prosecution is bound to call and examine each and every one of those persons. In case enough number of witnesses have been examined with regard to the actual

occurrence and their evidence is reliable and sufficient to base the conviction of the accused thereon, the prosecution may well decide to refrain from examining any other person. In the instant case, incidentally, all the witnesses examined by the prosecution side, to prove how the incident had occurred, were near relatives of deceased Haribhai and Gopalbhai and all of them were injured and they were very much present at the scene of incident. Moreover, there is no reason for the complainant party to falsely implicate the accused party and allow the real culprit to go scotfree and since they all are injured in the incident and suffered loss of two lives, they have no reason to spare the real culprit and save them from the punishment.

We must say that at the end of his adroit and skillful arguments with all vehemence at his command, Mr. Barot could not convince us on any point and we find that he was no further than he started.

31. In view of the discussion made by us hereinabove with respect to the prosecution case, defence of the accused, evidence on record, statutory provisions contained under Section 149 IPC, and various judgments of the Supreme Court, according to us, the following points can be culled out which would lead to the unerring conclusion that the accused are liable for the offence with which they were charged:

(i) All the accused persons, except A-4, Shanabhai Ranchhodbhai Parmar, formed an unlawful assembly, armed with deadly weapons, in furtherance of their common object to take revenge against the complainant party for the incident which had taken place in the morning, came near the house of deceased Haribhai and started abusing him when Haribhai and P.W.4, Chimanbhai, the complainant were standing under a neem tree and were talking inter-se.

(ii) The accused persons, on being asked not to use abusive language, immediately attacked

Haribhai and P.W.4, Chimanbhai, the complainant with deadly weapons like dharia, spear and sticks. The incident lasted only for about 5 minutes. In the meantime, Gopal and P.W.6, Ramabhai came there and intervened. In that process the accused persons dealt blows on them. Thereafter P.W.8, Devilaben and P.W.9, Gangaben intervened and the accused persons inflicted blows on them also.

(iii) As a result of the assault, two persons i.e., Haribhai and Gopalbhai lost their lives, two prosecution witnesses, i.e., P.W.4, Chimanbhai and P.W.6, Ramabhai suffered grievous injuries and two prosecution witnesses i.e., P.W.8, Devilaben Haribhai and P.W.9, Gangaben Ramabhai sustained simple injuries.

(iv) The prosecution has been able to establish that the accused party were the aggressors.

(v) In the scuffle, P.W.8, Devilaben Haribhai and

P.W.9, Gangaben Ramabhai had thrown wooden logs on the accused and they also beat them with wooden logs which caused simple injuries to some of the members of the accused party and in this way the injuries on the person of the accused party are explained by the prosecution.

(vi) The genesis and origin of the crime has been revealed and the prosecution has presented the true version of the incident.

(vii) There are some discrepancies and contradictions in the evidence of some of the prosecution witnesses which are so minor and trivial that they are not capable of raising any doubt in the prosecution case, which is supported by reliable and trustworthy evidence of the prosecution witnesses.

(viii) The defence put forth by the accused in their written statement is not at all probable and is not capable of raising any doubt on the prosecution case. In their defence, the accused

have tried to put the theory of free fight between two groups and, therefore, the accused must get benefit of doubt. This defence is absolutely unsupported by evidence and on the contrary it is against the evidence on record.

(ix) The prosecution has successfully brought home the charges levelled against the accused persons except A-4, Shanabhai Ranchhodbhai Parmar, who has been acquitted by the trial court.

32. It is required to be noted that examining the whole evidence in a case, if it is found that the cumulative effect of the evidence against the accused persons is sufficiently convincing for the trial Court to have come to the conclusion that the offence with which the accused were charged were established against them beyond reasonable doubt, this Court should hesitate very much to interfere with it. In instant case, we find ourselves in complete agreement with the reasons assigned, conclusions arrived at and the

ultimate order of conviction and sentence recorded by the trial court and according to us, no other conclusion is possible, in the facts and circumstances of the case, except the one recorded by the trial court and the sentence imposed on the accused persons is most appropriate and deserving.

33. Seen in the above context, the appeal lacks merit and deserves to be dismissed by confirming the judgment and order of conviction and sentence recorded by the trial court against the accused.

34. For the foregoing reasons, the appeal fails and accordingly it is dismissed. The impugned judgment and order of conviction and sentence passed by the trial court in Sessions Case No.11 of 1999 is hereby confirmed and maintained. It is ordered that all the substantive sentences imposed on the accused shall run concurrently.

35. Since Mr. Manubhai Barot, learned advocate of the accused, has stated that A-3, Bhagwanbhai

Ranchhodbhai Parmar, has been released from the jail and the appeal filed by him is not pressed, we dismiss the appeal so far as A-3, Bhagwanbhai Ranchhodbhai Parmar, is concerned, as having not pressed.

(A.M. Kapadia, J.)

(Harsha Devani, J.)

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